

IN THE TUSCARAWAS COMMON PLEAS COURT
TUSCARAWAS COUNTY, OHIO

2001 AUG 24 P 12:36

PENNY TATMAN MATTHUS, et al. ROCKNE W. CLARKE CASE NO. 2001 CT 08 0423
CLERK OF COURTS

Plaintiffs : JUDGE ELIZABETH L. THOMAKOS

vs. : ANSWER AND THIRD-PARTY
COMPLAINT

WILLIAM FEHN, et al. :

Defendants/Third Party Plaintiffs :

vs. :

UNITED STATES POSTAL SERVICE :

Third Party Defendant :

FIRST DEFENSE

Plaintiffs' Complaint is barred by reason of failure to join a necessary party.

SECOND DEFENSE

Plaintiffs' Complaint is barred by failure to state a cause of action against these

Defendants for which relief can be granted.

FIRST AFFIRMATIVE DEFENSE

Plaintiffs' Complaint is barred by reason of assumption of risk.

SECOND AFFIRMATIVE DEFENSE

Plaintiffs' Complaint is barred by reason of contributory negligence.

ANSWER

Now come the Defendants/Third-Party Plaintiffs, (hereinafter referred to as "the Fehns") and for their answer to Plaintiffs' Complaint, make the following admissions, denials, and averments:



1. The Fehns deny for lack of knowledge sufficient to form a belief as to their truth or falsity, the allegations contained in Paragraph 1 of Plaintiffs' Complaint.
2. The Fehns admit the allegations contained in Paragraphs 2 and 3 of Plaintiffs' Complaint.
3. The Fehns deny for lack of knowledge sufficient to form a belief as to their truth or falsity, the allegations contained in Paragraphs 4 and 5 of Plaintiffs' Complaint.
4. The Fehns deny the allegations contained in Paragraphs 6, 7, 8, 9, 10, and 11 of Plaintiffs' Complaint.
5. The Fehns deny for lack of knowledge sufficient to form a belief as to their truth or falsity, the allegations contained in Paragraph 12 of Plaintiffs' Complaint.
6. The Fehns deny the allegations contained in 13 of Plaintiffs' Complaint.
7. The Fehns deny for lack of knowledge sufficient to form a belief as to their truth or falsity, the allegations contained in Paragraph 14 and 15 of Plaintiffs' Complaint.

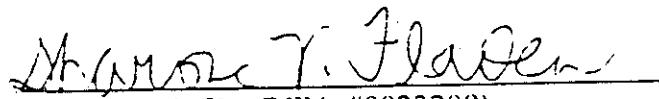
WHEREFORE, the Fehns request that Plaintiffs' Complaint be dismissed with costs to Plaintiffs.

THIRD PARTY COMPLAINT

1. The Fehns are the owners of certain real estate located at 110 North High Street, Mineral City, Ohio 44657-9998 (hereinafter referred to as "the Premises.")
2. On or around July 27, 1992, the Fehns, as Lessors, executed a lease with the United States Postal Service, the Third-Party Defendant, as Lessee, for the Premises. A copy of said lease, and memorandum of lease is attached hereto and incorporated herein as Exhibit A.

3. The term of said lease was for five (5) years with an option to renew said lease for one additional five (5) year term.
4. Prior to the expiration of the initial five-year term, Third-Party Defendant exercised its option to renew the lease for an additional five (5) year term.
5. Pursuant to the lease, it is Third-Party Defendant's responsibility to maintain the Premises.
6. Third-Party Defendant, not Third-Party Plaintiffs, is liable for any injuries proximately caused to Plaintiff Penny Matthus as a result of the failure to maintain the premises.
7. In the event that the Fehns are found liable for any injuries caused to Plaintiffs, the Fehns seek indemnification by Third-Party Defendant for any damages that the Fehns incur as a result of this lawsuit.

WHEREFORE, Defendants/Third Party Plaintiffs, the Fehns pray for judgment against Third Party Defendant for indemnification of any damages awarded to Plaintiffs against Defendants/Third Party Plaintiff, for attorney fees, for costs, and for any further relief that this Court deems fair and equitable.


SHARON V. FLADEN (#0023208)
Attorney for Defendants/Third Party Plaintiffs
437 Market Avenue North
Canton, Ohio 44702
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INSTRUCTIONS TO THE CLERK

Please issue service of summons and the Defendants' Answer/ Third Party Complaint upon Third Party Defendant at the address listed in the caption of this complaint, by **CERTIFIED MAIL, RETURN RECEIPT REQUESTED**, making the same returnable according to law.

Sharon V. Fladen
SHARON V. FLADEN
Attorney for Defendants/Third Party Plaintiffs

PROOF OF SERVICE

I hereby certify that a copy of the foregoing Defendants' Answer and Third Party Complaint was sent by regular U.S. mail this 23rd day of August, 2001 to James J. Ong, Attorney for Plaintiff, 206 West High Avenue, P.O. Box 992, New Philadelphia, Ohio 44663.

Sharon V. Fladen
SHARON V. FLADEN
Attorney for Defendants/Third Party Plaintiffs